

Panaji, 21st December, 1989 (Agrahayana 30, 1911)

SERIES II No. 38



सत्यमेव जयते

OFFICIAL GAZETTE

GOVERNMENT OF GOA

GOVERNMENT OF GOA

Education Department

Order

No. 14/2/87/EDN (Part II)

Read: 1. Govt. Order No. 14/2/87/EDN/II dated 28-8-89.
2. Govt. Order No. 14/2/87/EDN dated 10-11-89.

In partial modification of the Orders referred to above, the transfer of the Officer of the Directorate of Education indicated below is ordered with immediate effect in public interest:-

Sr. No.	Name and designation of the officer and his present posting	Post and place to which transferred
1	2	3
1.	Shri G. G. Kharandikar, Principal, Government Higher Dy. Education Officer.	Secondary School Sanguelim vice Shri D. K. Khore who has been retired on superannuation on 31-10-89.

By order and in the name of the Governor of Goa.

A. P. Panvelkar, Under Secretary (Education).

Panaji, 1st December, 1989.

Revenue Department

Notification

No. 22/136/88-RD

Whereas by Government Notification No. 22/136/88-RD dated 3-11-1988 published on page 368 to 370 of Series II, No. 35 of the Official Gazette dated 1-12-1988 and in two newspapers (i) Navhind Times dated 15-11-1988 and (ii) Gomantak dated 14-11-1988 it was notified under section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land specified in the Schedule appended to the said Notification (hereinafter referred to as the said land) was likely to be needed for public purpose, viz. Land Acquisition for the access road to the Agricultural plots of village Ravona Taluka, Sattari.

And whereas, the Government being of the opinion that the acquisition of the said land is urgently necessary, hereby applies the provisions of sub-section (1) and sub-section (4) of section 17 of the said Act and directs that the Collector appointed under paragraph 2 below, shall, at any time, on the expiry of fifteen days from the date of the publication of the notice relating to the said land under sub-section (1) of section 9 of the said Act, take possession of the said land.

Now, therefore, the Government hereby declares, under the provisions of section 6 of the said Act, that the said land is required for the public purpose specified above.

2. The Government also hereby appoints, under clause (c) of section 3 of the said Act, the Special Land Acquisition Officer (North) Irrigation Department, Duler, Mapusa to perform the functions of the Collector North Goa District, Panaji, for all proceedings hereinafter to be taken in respect of the said land and directs him under section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the Office of the Special Land Acquisition Officer (North) Irrigation Department, Duler, Mapusa till the award is made under section 11.

SCHEDULE

(Description of the said land)

Taluka: Sattari

Village: Ravona

Survey No. Sub. Div. No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3
27/11 part	O: 1. Manikrao Suryaji Rane. 2. Parshuram Anantrao Rane. 3. Jiji Sadbarao Rane. 4. Ranojirao Jaibarao Rane. 5. Umaji Zalbarao Rane. 6. Bhausaheb Raghoba Rane. 7. Shri Krishnarao Yeshbarao Rane. 8. Shri Rausaheb Ganapat Rane. 9. Shri Buvasaheb Narshivarao Rane. 10. Shri Radhabai Ganpatrao Rane. 11. Shri Bhausaheb Zalbarao Rane. 12. Shri Narayanrao Balasaheb Rane. 13. Shri Venkatrao Visvasrao Rane. 14. Shri Bacharam Visvasrao Rane. 15. Smt. Savitri Dattaram Rane. 16. Shri Shripadrao Zalbarao Rane. 17. Vamanrao Zalbarao Rane. 18. Narayanrao Zalbarao Rane. 19. Sitaram Balasaheb Rane. T: 1. Shri Ganesh Mukund Usapkar. 2. Shri Laxman Soma Gauns.	410.00
27/14 Part	O: As per S. No. 27/11 part.	40.00
27/15 part	O: As per S. No. 27/11 part. T: 1. Shri Vishnu Narayan Mayenkar. 2. Shri Arjun Sukdo Mayenkar. 3. Shri Laxman Mahadeo Gauns.	410.00
27/20 part	O: As per S. No. 27/11 part. T: 1. Shri Fati Sona Paryenkar. Cultivator: 1. Shri Jaisingh Parshuram Rane. 2. Shri Ganabarao Tanabarao Rane.	280.00
23/1 part	O: 1. Shri Manikrao Suryaji Rane. 2. Shri Parshuram Anantaro Rane. 3. Shri Jiji Sadbarao Rane. 4. Shri Ranojirao Jaivarao Rane. 5. Shri Umaji Zalbarao Rane. 6. Shri Bhausaheb Raghoba Rane. 7. Shri Krishnarao Yeshbarao Rane. 8. Shri Rausaheb Ganpat Rane. 9. Shri Buvasaheb Narshivarao Rane. 10. Smt. Radhabai Ganpatrao Rane. 11. Shri Bhausaheb Zalbarao Rane. 12. Shri Narayanrao Balasaheb Rane. 13. Shri Venkatrao Visvasrao Rane.	90.00

1	2	3
	14. Shri Bacharam Vishwasrao Rane. 15. Smt. Savitri Dattaram Rane. 16. Shri Shripadrao Zalbarao Rane. 17. Shri Vamanrao Zalbarao Rane. 18. Shri Narayanrao Zalbarao Rane. 19. Shri Sitaram Balasaheb Rane.	
27/1 part	O: 1. Manikrao Suryaji Rane. 2. Parshuram Anantrao Rane. 3. Jiji Sadbarao Rane. 4. Ranojirao Jaibarao Rane. 5. Umaji Zalbarao Rane. 6. Bhausaheb Raghoba Rane. 7. Shri Krishnarao Yeshbarao Rane. 8. Shri Rausaheb Ganapat Rane. 9. Shri Buvasaheb Narshivarao Rane. 10. Shri Radhabai Ganpatrao Rane. 11. Bhausaheb Zalbarao Rane. 12. Shri Narayanrao Balasaheb Rane. 13. Shri Venkatrao Visvasrao Rane. 14. Shri Bacharam Visvasrao Rane. 15. Smt. Savitri Dattaram Rane. 16. Shri Shripadrao Zalbarao Rane. 17. Vamanrao Zalbarao Rane. 18. Narayanrao Zalbarao Rane. 19. Sitaram Balasaheb Rane.	2525.00
	Cultivator:	
	1. Jising Parshuram Rane. 2. Gunbarao Tanbarao Rane.	
27/6 part	O: As per S. No. 27/1 part. T: Vithoba Vassu Gauns. Shiva Vishnu Gauns. Babai Rama Gauns.	120.00
27/8 part	O: As per S. No. 27/1 part. T: 1. Nakul Krishna Gauns. 2. Govind Krishna Gauns.	890.00
27/10 part	O: As per S. No. 27/1 part. T: Madhu Rama Gauns.	140.00
Boundaries:		
North: S. No. 23/1.		
South: S. No. 35.		
East: S. No. 23/1, 27/1, 8, 11, 15, 20, S. No. 67.		
West: S. No. 27/1, 32/6, 8, 10, 14, 15, 20, 1.		
Total		4905.00

By order and in the name of the Governor of Goa.

P. S. Nadkarni, Under Secretary (Revenue).

Panaji, 1st September, 1989.

Notification

No. 22/14/89-RD

Whereas by Government Notification No. 22/14/89-RD dated 27-1-89 published on page 475 to 477 of Series II, No. 44 of the Official Gazette dated 7-2-89 and in two newspapers (i) Herald dated 4-2-89 and (ii) Gomantak dated 16-2-89 it was notified under section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act"), that the land specified in the Schedule appended to the said Notification (hereinafter referred to as the said land), was likely to be needed for public purpose viz. Land Acquisition for construction of Minor Irrigation Scheme at Chapoli in Canacona Taluka (addl. area).

And whereas, the Government of Goa (hereinafter referred to as the "Government") being of the opinion that the acquisition of the said land is urgently necessary, hereby applies the provisions of sub-section (1) and sub-section (4) of section 17 of the said Act and directs that the Collector appointed under paragraph 2 below, shall, at any time, on the expiry of fifteen days from the date of the publication of the notice relating to the said land under sub-section (1) of section 9 of the said Act, take possession of the said land.

Now, therefore, the Government hereby declares under the provisions of section 6 of the said Act, that the said land is required for the public purpose specified above.

2. The Government also hereby appoints under clause (c) of section 3 of the said Act, the Special Land Acquisition Officer, S.I.P. Gogal Margao to perform the functions of the Collector for all proceedings hereinafter to be taken in respect of the said land and directs him under section 7 of the said Act to take order order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the Special Land Acquisition Officer, S.I.P. Gogal Margao till the award is made under section 11.

SCHEDULE

(Description of the said land)

Taluka: Canacona		Village: Canacona	
Survey No. Sub. Div. No.	Names of the persons believed to be interested	Approximate area in sq. mts.	
1	2	3	
65 part	O: 1. Sonu Naik Dessai. 2. Yeshwant Naik Dessai. 3. Bombo Naik Dessai. 4. Babu Vishwanath Dessai. 5. Pandhari Shamba Dessai. 6. Direkar Krishna Naik.	3400.00	
66/part	O: Uttam Ladu Sawant.	1025.00	
80/1 part	O: 1. Gama Yeshwant Dessai. 2. Premanand Yeshwant Naik Dessai. 3. Babu Datta Naik Dessai. 4. Purushottam Shaba Naik Dessai. 5. Shambu Yesso Naik Dessai. 6. Madhukar Shivram Naik Dessai. 7. Shripad Shivram Naik Dessai. 8. Dinanath Shambu Naik Dessai. 9. Venkatesh Vithoba Naik Dessai. 10. Mangola Gopinath Naik Dessai. 11. Rama Raghunath Naik Dessai. 12. Uttam Rama Naik Dessai. 13. Premabai Viswanath Naik Dessai. 14. Gomati Laxman Naik Dessai. 15. Kusta Pandu Naik Dessai. 16. Jamuvanti Pandari Naik Dessai.	18600.00	
80/2 part	O: Pandurang Bhairali.	2900.00	
81/2	O: Mallikarjun Devasthan. T: Shamba Govind Bhikat. Devappa Yessu Bhikat. Kushali Kusta Bhagat. Pandari Kusta Bhagat.	23000.00	
81/4 part	O: Mallikarjuna Devasthan. T: Shanta Shankar Bhagat.	2650.00	
81/7 part	O: Shri Mallikarjuna Devasthan.	41500.00	
88/1 part	O: 1. Girmo Bhagu Dessai. 2. Babu Purso Dessai.	100000.00	
88/5 part	O: 1. Premanand Bhozro Gaonkar. 2. Laxman Nilu Gaonkar. 3. Shitabai R. N. Gaonkar. 4. Kashinath R. N. Gaonkar. 5. Anant N. V. Gaonkar. 6. Madhukar Gamba Naik Gaonkar. 7. Shabu Ganba Naik Gaonkar.	2270.00	
<i>Boundaries:</i>			
North: S. No. 88/1 & 65.			
South: S. No. 81/3 to 5 S. No. 80/1, 2 & S. No. 66.			
East: S. No. 65 & S. No. 66.			
West: S. No. 81/1 & Nala.			
56/1 part	O: Mallikarjun Devasthan.	9500.00	
57/1 part	O: —do—	61000.00	
73/2 part	O: 1. Pandari Appaji Sinai Talwadkar. 2. Pandurang Gopal Naik Gaonkar. 3. Sadanand Gamba Naik Gaonkar. 4. Narba Bhiku Naik Gaonkar. 5. Mukund Bhiku Naik Gaonkar. 6. Yeshwant Bhiku Naik Gaonkar.	10000.00	

1	2	3
	7. Mohandas Bhiku Naik Gaonkar.	
	8. Krishnarao Bhiku Naik Gaonkar.	
	9. Govind Venkatesh Nagarsekar.	
	10. Pandurang S. N. Nagarsekar.	
	11. Suresh Vasant Nagarsekar.	
	12. Ganesh Gopal Dessai.	
	13. Ramabai Narayan Dessai.	
	14. Mangesh Anant Sinai Nagarsekar.	
	15. Ganeshyam Anant Sinai Nagarsekar.	
	16. Anand Narekari Sinai Nagarsekar.	
	17. Ramakant Shripad Palandikar.	
	T: 1. Ratnakar Mukund Naik.	
	2. Shrinivas Fondu Naik.	
74/2 part	O: 1. Shankar Raghunath Fal Dessai.	2200.00
74/3	O: Ramchandra Giblo Gaonkar.	2700.00
74/4 part	O: 1. Pandhari Shiva Fal Dessai.	2500.00
	2. Putu Shiva Fal Dessai.	
	3. Vishwanath Shiva Fal Dessai.	
74/5	O: Kashinath Eadi Fal Dessai.	2800.00
	Pandu Sham Fal Dessai.	
74/6 part	O: Pokodi Shanu Fal Dessai.	1175.00
74/7 part	O: Butto Shanu Dessai.	8625.00
74/8	O: Balso Sadu Fal Dessai.	5050.00
74/9	O: Yesso Bhiku Fal Dessai.	4325.00
74/11	O: 1. Suresh Vasant Nagarsekar.	150.00
	2. Govind Venkatesh Nagarsekar.	
	3. Pandurang S. Nagarsekar.	
	4. Pandari Appafisinai Talwadkar.	
	5. Ramabai Narayan Dessai.	
	6. Ganashyam Anant Sinai Nagarsekar.	
	7. Mangesh Anant Sinai Nagarsekar.	
	8. Anand Narahari Sinai Nagarsekar.	
	9. Ramakant Shripad Palandikar.	
	T: 1. Balachandra Narayan Dessai.	
	2. Janardhan Krishna Naik.	
Boundaries:		
North: S. No. 74/2, 4, 6, 7, 10, & 11, S. No. 73/2 and S. No. 57 of Canacona village.		
South: S. No. 202 of village Nagorcem Palolem and S. No. 56 of village Canacona.		
East: S. No. 56 & 57 of Canacona village.		
West: S. No. 202 of village Nagorcem Palolem.		
Taluka: Canacona Village: Nagorcem-Palolem		
200/1	O: Datta Babu Dessai.	7225.00
"/2	O: 1. Purushottam Shabu Dessai.	8125.00
	2. Shripad Shivram Dessai.	
	3. Shabu Yesso Dessai.	
"/3	O: Kushali Gaonkar.	125.00
	Nilini Kushali Dessai.	
"/4	O: Ram Shaba Gaonkar.	600.00
"/5	O: Ratnakar Ganesh Gaonkar.	825.00
"/6	O: Apa Narayan Gaonkar.	1000.00
"/7	O: Hara Shiva Gaonkar.	2300.00
	Santaji Rama Naik Gaonkar.	
"/8	O: Pandurang Datta Dessai.	1050.00
"/9	O: Gomati Narayan Gaonkar.	1225.00
"/10	O: Purushottam Shiva Gaonkar.	1200.00
"/11	O: Esodi Yeshwant Dessai.	21750.00
"/12	O: 1. Premabhai V. Desai.	6075.00
	2. Uttam Ram Dessai.	
	3. Kusta Pandu Dessai.	
201/1	O: Ram Shabu Naik Gaonkar.	17400.00
"/2	O: Purushottam Shiva Naik Gaonkar.	8300.00
"/3	O: Apa Narayan Naik Dessai.	5200.00
"/4	O: Shivram Narayan Comarpant.	15600.00
"/5	O: Krishna Bhiku Naik Dessai.	7100.00
Boundaries:		
North: S. No. 195/1, 195/2, 194/5, of village Nagorcem Palolem and S. No. 87/2 87/1, 86/1 & 82/1 of village Canacona.		
South: S. No. 195/3 to 7 of village Nagorcem Palolem, S. No. 86/1 to 4 & 82/1 of village Canacona.		

1	2	3
Taluka: Canacona Village: Canacona		
87/1 part	O: 1. Vasudev Balkrishna Bhikaro.	570.00
	2. Vithoba Balkrishna Bhikaro.	
82/1 part	O: Gokuldas Naik.	1050.00
Total		412090.00

By order and in the name of the Governor of Goa.

P. S. Nadkarni, Under Secretary (Revenue).

Panaji, 4th December, 1989.

Public Health Department

Addendum

No. 45/4/79-PHD

Read:— Notification No. 45/4/79-PHD dated 30.6.89.

In the notification mentioned above in respect of the authorised medical attendants for the purpose of Central Services (Medical Attendance) Rules 1944, the following shall be added after the Director and Professor of Institute of Psychiatry and Human Behaviour Panaji for Officers with pay not less than Rs. 2200/- per month:

"Community Psychiatrist"

By order and in the name of the Governor of Goa.

L. J. Menezes Pais, Under Secretary (Health).

Panaji, 28th November, 1989.

Department of Labour

Order

No. 26/27/89-LAB

In exercise of the powers conferred by sub-section (2) of section 65 of the Factories Act, 1948 Central Act 63 of 1948) (hereinafter called the 'said Act'), the Government of Goa hereby exempts all the adult workers of the Air Engineering Workshop and Motor Transport Section (MT Pool) of INS Hansa, Dabolim, from the provisions of section 51 of the said Act subject to the conditions as laid down in sub-section (3) of said section 65 of the said Act, for a period of one year from the date of publication of this Order in the Official Gazette.

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 5th December, 1989.

Order

No. 28/2/88-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary, (Industries and Labour).

Panaji, 7th July, 1988.

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Reference No.: IT/35/78

Shri Madhusudan D. Pawasker -- Party I/Workman
V/s
M/s. Tukaram S. Loliengar -- Party II/Employer

Adv. M. Bandodkar is representing the Employer/Party II.

Panaji. Dated.: 13-6-1988

AWARD

This is a reference made by the Government of Goa by its order No. IRM/CON/(164)/76/IT-78 dated 23rd May, 1978, with an annexure scheduled thereto which reads as follows:

"1. Whether Shri Madhusudan D. Pawaskar, is a workman, as defined under Industrial Disputes Act, 1947?"

ii. Whether the action of the management of M/s. Tukaram S. Loliencar, Margao, Goa in terminating the services of Shri Madhusudan D. Pawaskar with effect from 16-8-74, is legal and justified?

If not, to what relief the concerned workman is entitled to?"

2. The schedule to the reference shows that it is in two parts and the reference in the first part is treated as a preliminary issue in as much as the reference part I says "whether Madhusudan is a workman as defined under I. D. Act 1947." This is the crux of the whole matter and after this first part is answered and after the Tribunal comes to a conclusion that the said Pawasker is a workman then only the second part comes into play for the question whether the action of termination of the services of the workman Pawasker by the management of M/s. Tukaram S. Loliienkar in terminating the services of the said Pawasker w.e.f. 16-8-74 is legal & justified will have to be gone into. It has to be noted here pertinently that the so called termination is directed on 16-8-74 while the Government reference is dated 23rd May, 1978 i.e. after about 4 years. The delay in the Govt. reference is also an aspect to be taken into consideration in this protracted matter which is pending consideration for over 10 years. It has to be noted pertinently that the Party No. I/Madhusudan D. Pawasker is fighting the matter from the beginning without the aid or advice of any Labour Consultant or Advocate and all along he has been making a grievance that he is fighting the case of his own and the Tribunal should take this aspect into consideration because the Party II/management was represented by legal advisors such as Ramesh Dessai and the Party No. I on the other hand is fighting the case lone handedly and he desires this Tribunal to take this aspect into consideration in this protracted litigation of over 10 years. Being conscious about this position and while appreciating the courage of Party No. I in this regard this Tribunal has to take the over all evidence into consideration and has to be circumspect in the matter and has to deal with the same to find out the truth and whether anybody is interested in supressing the truth. I am making these observations at a preliminary stage because the Party No. I who had joined the services of Party No. II on 5th April '69 was caught in a turmoil in 1974 when the charge of embezzlement was levelled against him. Not only this, on the showing of the workman himself a criminal case was filed against him before the Mapusa police and as stated by him at page 7 of his statement before court he was arrested by Mapusa police on 21-8-74 on the complaint of the Manager of the Head Office by name Mr. Kane and the charge levelled against him was that he has misappropriated Rs. 71,000/- of the employer/Party II. I am making a reference to this at the initial stage only to know whether any vested interest are acting against Party No. I, whether the Party No. I is really a victim of the maneuvers of the employer or whether the Party No. I was discharged from service while doing a honest job. While considering this, it has also to be seen whether Party No. I was in fact appointed to the post of Manager or a Branch Manager of the branch newly opened at Mapusa sometime in April, 1969. It has been maintained by the Party No. II all along that the Party No. I was appointed by them as the Manager of the branch of M/s Tukaram S. Loliienkar having the head office at Margao.

The branch at Mapusa was newly opened and the Party No. I according to them was appointed as a branch Manager. The Govt. reference states in part I that this Tribunal has to find out whether the Party No. I/Pawasker is a workman as defined under the I.D. Act (hereinafter referred to as the Act). If Party No. I is not a workman as defined under the Act the whole reference would go out of the purview of this court and the question of the termination of the services and whether the termination is legal just or otherwise need not be gone into, because any finding on the part I of the reference going against the Party No. I Pawasker, would bring this reference out of the purview and jurisdiction of this Tribunal. After making these preliminary observations about the basic facts of this reference I shall initially traverse the pleadings of the parties which are more or less the repetition of the same things but as the matter is very old pending consideration for over 10 years, I have to consider the pleadings of the parties initially at this stage to understand the correct nature of the reference and then to decide the crucial first part whether the Party No. I is really a workman within the meaning of the definition under the Act.

3. After the registration of the reference the notices were issued to the parties and the written statement of the partner of Party No. II is dated 25-1-79 wherein it is said in para. 3 that the Party No. I, Madhusudan D. Pawasker was employed by the firm at their Mapusa branch as the Manager-cum-Incharge of their Mapusa branch since its inception in May, '69. This statement shows that the branch was opened in May, '69 and the question is whether the Party No. I was appointed in the month of May or before that. In this regard the statement in para. 3 says that by a letter dated 14-4-67 the Party No. I was appointed as Manager-cum-Incharge of the Mapusa Branch the starting of which was in contemplation. A true copy of the letter is produced on record and in the same para it is said that the original copy of the appointment letter is produced in the file of J. M. F. C. at Mapusa before whom a criminal case filed against the said Pawasker for misappropriation of Rs. 70,000/- is pending. Be it noted here that it is a police case, the offence being cognizable and the chargesheet is filed by the police at the instance of the management of the firm having its Head office at Margao. We are not directly or even remotely concerned with the criminal prosecution of Party No. I but this aspect has to be taken into consideration because after getting the knowledge of the so called embezzlement, a letter of suspension was initially served on the said Pawasker on 3-8-74 and thereafter the order of termination was served on him on 16-8-74. The written statement further says in para. 5 that Pawasker was not appointed as the Manager abruptly but the management had received an application of the said Pawasker requesting the management of the Head Office at Margao to appoint him as the Manager of the branch to be started at Mapusa. With this information given in para. 3 to 5 of the written statement the Opponents have raised a preliminary objection to the reference on the ground that he was working with the firm in the managerial capacity at their Mapusa branch and that he was not a workman within the meaning of the definition under the Act. They maintained that the termination was not retrenchment but the same was by way of disciplinary action in view of the revelation of the fact that the said Pawasker had misappropriated the funds of the firm to the tune of Rs. 70,000/-. In order to show that the said Pawasker was appointed as the Manager of the branch they rely on his application for appointment and the letter of appointment and thereafter the series of letters written to the Head Office at Margao by the said Pawasker. These are the main points which are relevant for consideration so far as the written statement of the Party No. II is concerned.

4. Advertising then to the claim statement of Party No. I, he has filed the same on 9th. June, 1980 and he denies in para. 3 that he was working in the managerial capacity at the said branch of Party No. II. According to him he was merely a Salesman and as such he is a workman as defined under the Act. About the letter of appointment dated 14-4-69 designating him as Manager-cum-Incharge of Mapusa branch he categorically denies in para. 5 of the statement that he had not received any such letter of appointment. According to him, the letter of appointment dated 14-4-69 is obviously a manipulation, mischievously made in 3-8-74 in order to implicate the petitioner meaning the Party No. I in the criminal case. The rest of the portion of the claim statement is not quite material in this preliminary inquiry which is confined to the status of the Party No. I as to whether he is a workman and whether he worked and was appointed in a managerial capacity at the Mapusa branch which was opened by the Head Office sometime in May, 1969.

5. With these rival contentions my Predecessor framed the following issues on 26-6-80:

1. Does the Workman/Party I prove that the delay in raising the dispute is justified?
2. Do the Employer/Party II prove that the Workman/Party I was working in the managerial capacity?
3. Does the Workman/Party I prove that he was merely a "Salesman"?
4. Do the Employers/Party II prove that the termination of the services of the Workman/Party I is legal and justified?
5. Does the Workman/Party I prove that the termination of his services is illegal and unjustified?
6. Does the workman/Party I prove that he is entitled for reinstatement with full back wages including Bonus and Management's contribution for the Provident Fund from the date of suspension viz. 3-8-74 till the date of effective reinstatement?

6. It is obviously clear that issue no. 2 and 3 are necessary and material for the purpose of the preliminary enquiry. In this matter and these two issues are synonymous to Part I of the Government reference. Hence while dealing with these two issues what has to be seen is whether the employer/Party II proves that the workman/Party I was working in a managerial capacity and reciprocally the workman/Party I proves that he was merely a Salesman. Hence in order to decide these two preliminary issues the evidence will have to be gone into to see and study and understand the nature of work carried out by Party No. I and then to find out whether he is a workman within the meaning of the term as defined under the Act.

7. In this matter which is very old the deposition of Party No. I/Workman has been recorded by stages and during the course of the examination in chief and cross examination some documents have been produced and it is to be seen whether those documents are duly and properly proved and this is more so in particular to the application made by Party I for appointment and consequent upon it the letter of appointment issued by the Opponent/Party No. II. Hence the minute study of this 2 letters which have the weight and value of antiquity is of crucial importance in this case and in a way the application for appointment and the letter of appointment issued by the management form the crux of the whole matter. It has to be noted pertinently that through out his pleadings as well as the evidence recorded before the Court the Party I makes out a statement that the so called letter of appointment is a fabrication and the management has made the fabrication to suit its charge of misappropriation levelled against Party No. II in the year 1974. It has to be seen as to how and why the management should be interested in fabricating the letter of appointment and how fabrication would go to prove the charge that the Party I has embezzled the funds of Party II to the tune of Rs. 70,000/- or so. All these aspects will be relevant for consideration in this case to understand the plea of the O.P. that the Party I was working with them in a managerial capacity and that the nature of his work was both supervisory and managerial. Without going into the merits of the other aspects of the case, I am confining my discussions to this aspect only of the case whether the O.P. Management have proved its case beyond doubt that they have appointed Party No. I as Manager-cum-Incharge of their newly started branch at Mapusa.

8. Here the principles of Sec. 35 of the Indian Evidence Act regarding the official conduction of business are attracted. It has to be noted here pertinently that in 1974 or to be precisely in 1969 when the Party I was appointed it was not in the contemplation of anybody whether the nature of the services rendered by Party I was that of managerial capacity or whether he was a workman. The things have taken place during the course of the official conduction of business and the happenings. It has to be noted here that the ball started rolling initially at the instance of Party I himself in as much as he of his own volition wrote a letter to the owner of the shop of Lollenkar and this letter is in the nature of an application. As this letter set the things in motion it would be worthwhile to cursorily study what is stated in this letter cum application. The application Exb. E-1 is dated 5th April, 1969 and the Party No. I Madhusudan Pawaskar gives a reference that he had made the application for the post of Manager/Branch Incharge at the Mapusa branch to be opened by the O.P. After giving

this reference the Party I further states that on learning that the O.P. is going to open a branch at Mapusa he has offered to serve as a Manager/Branch Incharge of the Mapusa branch. He has then given the details of his qualification and experience and his qualification mainly consisted of London Diploma in Book-Keeping and ability to understand commercial correspondence in particular in English, Hindi, Marathi, Konkani and Portuguese. In the past he has worked with different concerns and in the preceding two and half years he was conducting his own business of inventing and Insurance Agency. These details of the Party I given by himself go to show that he is a versatile person knowing the requirements of any business and with ability to conduct correspondence required for such business. Hence on the face of it the applicant with his qualification and experience was likely to be accepted as a proper and suitable hand when the matter of opening a branch at a new place is in contemplation. Further, the applicant was resident of Mapusa proper and such an experienced and versatile hand would be suitable for all practical purposes and this view seems to have prevailed upon the management who in response to this application issued a letter of appointment immediately. The copy of the letter is dated 14th April, 1969 and it is not admitted into evidence because in the opinion of my Predecessor it was not duly and properly proved. The Opponent has made a statement that the original letter is produced in the criminal case which is pending before J. M. F. C., Mapusa. Be it so as it may. A cursory review of this letter of appointment shows that the Party No. I was appointed as Incharge of Mapusa branch w.e.f. 1st May, 1969 and he was to be on probation for 3 months and thereafter he was to be confirmed. In the last para. it is mentioned that the management hoped that the Party I would carry his duty to the best interest of the firm since the branch would be at his care and he would guide the subordinate staff properly that was to be appointed there. Considering the presumption under section 35 of the Indian Evidence Act it has to be noted here that the management had no reason to fabricate such a letter of appointment. The Party No. I states that he was issued with a letter of appointment but the disputed letter of appointment was not the same. He states so for obvious reasons because the appointment is in a managerial capacity by entrusting the over all charge of the newly started Mapusa branch. It has to be noted further that earlier to the impugned letter of appointment the Party I has written a letter Exb. E-2 which is self-eloquent. In this letter Party I refers to an earlier letter dated 7th instant presumably in response to his application and the Party I states that he was impressed by the letter and he was happy to be in the service of the reputed and esteemed firm, so Party I did not accept other higher offers but he accepted their offer but demanded a salary of Rs. 300/- per month. All this has taken place during the course of the events and it cannot be said that anybody was any way interested in fabricating such a letter of appointment. Further, the Party I while admitting that in response to his application he had received a letter of appointment he is not able to produce the same and in this regard, there is a searching cross examination of Party I from pages 10 onwards in his deposition.

9. He admits that he started working with the Opponent firm M/s. Tukaram B. Lollenkar w.e.f. 1-5-1969. Here it has to be noted pertinently that the disputed letter X-1 dated 14th April, 1969 which is the letter of appointment states that the Party I was appointed as Incharge of Mapusa branch w.e.f. 1st May, 1969. In the absence of any other letter of appointment the copy produced can be taken into consideration for the limited purpose of holding that with that letter the Party I started functioning as Incharge of the branch opened by Lollenkar on 1st May, 1969. Further replies given by Party I are a pointer to this. He admits to have sent an application for appointment in the Mapusa branch and that he had asked for the post of a branch manager, and admits the contents of the application dated 5th April, 1969 and so it is admitted into evidence at Exb. E-1. He admits that he had met the Manager of the Opponent by name Mr. Kane before joining the Mapusa branch. It has to be noted that there is a reference to this Kane in the letter of appointment and actually the terms of appointment were discussed by Party I with this Mr. Kane. He also admits the letter dated 16th April, 1969 addressed by him to Party II wherein he demanded the salary of Rs. 300/- p.m. He admits the copy of the letter Exb. E-2. While admitting all the previous correspondence the Party I is not prepared to admit the letter of appointment dated 14th April, 1969 and this is obvious because the letter of appointment designates him as the Manager of the newly started branch at Mapusa. The things have taken place

about 20 years back and things have to be read between the lines and the fact that the Party I was appointed as a Manager of the Mapusa branch will have to be accepted as a proven fact and the say of Party No. I that he was just appointed as a Salesman appears to be an after thought. In his deposition recorded on 20-8-1982 the Party I states that this matter of appointment is a false and fabricated document and he would not admit it unless the same is proved properly. This seems to be the main controversy in the letter and I shall have to deal with this by taking a brief resume of other documents and admissions of Party I as regards the nature of work carried out by him and the correspondence which he had with the Head Office after his appointment in the Mapusa branch.

10. Besides the letter of appointment there are other documents with which Party No. I is confronted in the cross examination and the admissions given by him in the cross examination do show that he had asked for the job of a Branch Manager. At page 10 in his cross examination he does admits that "it is true that in my application to M/s. Tukaram S. Lollenkar, I had asked for the job of a Branch Manager" and he admits the application dated 5th April, 1969 at Exb. E-1. He thereafter met the Branch Manager, Kane and started functioning as Branch Manager from 1st May, 1969. Thereafter he is confronted with a letter Exb. E-3 dated 23-4-1974 addressed to the Branch Manager Shenoy. It is in his own hand writing and below his signature there is a stamp designating him as Incharge of the Mapusa Branch. According to him the rubber stamp below his signature in the letter is a fabrication and the stamp is put up subsequently. This clearly seems to be an after thought and the witness has a tendency to state that the particular document is fabricated when it is not favourable to him. In order to explain the position he states in page 12 of the cross examination that by using the word General Incharge he wanted to mean that he had to look after all the matters but he was not responsible for any. Then he is confronted with another letter dated 12-7-1969 at Exb. E-5 and he admits in this Marathi letter that his duties included to put a check and verify the bills submitted by the Accountant Mr. Bhat. Thereafter he has also stated that he was to increase and promote the sale of the products with the help of the assistants given to him. He adds a rider to this by saying that the promotion of sale is after all a duty of all and not his duty alone. However, he admits that it was a part of his duty to report to the Head Office about the progress made by other employees at Mapusa branch and this was a part of his duty as Incharge of Mapusa branch. All these replies given by the workman have to be considered cumulatively to understand the nature of work done by him and I shall then study a letter written by him in Marathi which is regarding the surprise check in the office and the explanation given by Party No. I about the shortcomings found in the Mapusa branch. In this letter dated 3-8-1974 written by the workman in Marathi in his own hand writing, has given an admission that he was responsible for all the happenings in the branch and that he was ultimately responsible for the things, he had offered to pay the money and this he had expressed to the branch manager Mr. Kane. This letter to be regarding the embezzlement of the money in the Mapusa branch. We are not directly concerned with the aspect of misappropriation and whether the Party I, is directly responsible in the embezzlement. That is a matter which is precisely within the purview of Judicial Magistrate who is dealing with the criminal case filed against Party No. I. I am considering this letter dated 3-8-1974 for the limited purpose of seeing whether the Party No. I was the person who was in the over all control of the Mapusa branch and he has accepted in unmistakable terms that he was responsible for all happenings in the branch. A person who is quite literate and well conversant with procedural aspects would not give such an admission unless he is holding the responsible post of running the branch. We are here to consider the position and status of the Party No. I with reference to the definition of a workman given U/s 2(s) of the Industrial Disputes Act and I feel that upon an overall consideration of all aspects including the letter of appointment, the Party No. I was appointed as a Branch Manager of the Mapusa Branch which was duly started by Party II in May, 1969. The Party No. I, does admit that his appointment was made on the basis of the application which he had made to the management and that application is at Exb. E-1. It therefore follows that there was the letter of appointment in his name issued by Party No. II. If the impugned letter of appointment is not the correct letter then it is for the Party No. I to produce the real letter of appointment which might be in his possession. The fact that the real letter of appointment is produced in the

case papers of the criminal case pending against Party I, is neither challenged nor denied by him. In view of this it has to be held that the copy of the letter of appointment which is on record is the copy of the original letter of appointment wherein Party I is designated as the Branch Manager of the branch at Mapusa which the Party II was to start from 1st May, 1969. In order to understand the point of the nature of work carried out by Party I all these papers and deposition have to be scanned rather in minute details and I am of the opinion that the position and status of Party I was that of a Branch Manager and he started so functioning from 1st May, 1969. We get a pointer to this in the question which the Party I has given in his application for appointment and it appears that Party I who is a well versed man was found suitable for the post and he was appointed for the post of Branch Manager. This is the conclusion which has got to be drawn at the end of the scrutiny of the overall evidence on record and the admissions given by Party I in his cross examination.

10. Another aspect to be noted in this matter is the delay in making an application for the relief under the I.D. Act. The termination of Party I has taken place way back in 1974 but the reference was delayed by about 4 years and the reference came to be made on 23rd May, 1978. In order to explain the delay the Party I states that he was in a bit mental turmoil because of the criminal prosecution levelled against him and so there was a delay in making a grievance about the termination of his services. Whatever may be the explanation given by Party I, the fact that there was a delay of about 4 years has to be taken in to consideration for the purpose of understanding the nature of work carried out by Party I. It appears that because he was appointed as a Branch Manager and because he was responsible for the running of the branch he initially devoted his attention to defend the criminal prosecution levelled against him and as the secondary aspect the Industrial Dispute was raised by him and question is whether the Industrial Dispute is sustainable and whether the Party I is a workman within the meaning of the term as defined in Sec. 2(s) of the I.D. Act.

11. The term 'workman' was generally defined as 'a person employed for skilled manual or clerical work'. This definition was made more exhaustive by the amendment of 1956 and besides this categories of skilled or unskilled work and clerical work a category of supervisory work or technical work was added and those who just work but does not fall within these 4 categories were out of the purview of the definition of the workman under the Act. A good deal of case law is developed on this point and the consensus of the legal opinion is that the salary or the nature of work are not of much importance and what is important is whether the work for which he is employed is not covered by the 4 types mentioned in the definition and not because he would be taken out of the definition under one of the exceptions. The Calcutta High Court has observed in the case reported in AIR 1958 Calcutta, page 273 that "Supervisor irrespective of his salary, is not a workman who is to discharge functions mainly of managerial nature by reason of the duties attached to his office or the powers vested in him". Pausing for a moment here while considering the nature of the duties carried to Party I, we find that he was appointed as the Manager of the branch, he was to endeavour to promote the sales of the newly opened branch, to check and supervise the work of the 3 or 4 employees who were to work under him and then to make periodical reports to the Head Office at Margao about the progress of the branch. About the monetary aspects it appears that he was to be the person responsible for the financial aspect of the branch and the surprise check up made by the Head Office in 1974 revealed that there was mis-management in the branch and the Head Office had to abruptly close down the branch of M/s. Tukaram S. Lollenkar on account of losses and this closure was followed by the notice of termination served on Party No. I. All these aspects have got to be taken into consideration to understand the nature of work carried out by Party I and I am of the opinion that he was the person who was the employee appointed to run the branch, and the appointment letter Exb. 5 dated 14-4-1969 indicates that he was appointed as the Branch Manager of the branch which was to start functioning from 1st May, 1969. In the letter Exb. E-4 he refers to himself as Gen. Incharge and in the letter Exb. E-5 he speaks about the various duties carried out by him in the managerial capacity. Lastly the letter Exb. E-11 written by him in Marathi dated 3-8-1979 shows that he had accepted the responsibility for the alleged irregularities in the branch and all these aspects have to be considered to understand the nature of duties carried out by him.

12. Reliance is placed on behalf of the Party II on some case law and I shall cursorily go through them. The Orissa case reported in 1977 Lab. I. C., 1154 pertains to a branch Manager of a Bank and that case is not of much importance so far as this case goes. The only observation in that case relevant for consideration is "In order to get an industrial dispute decided by the Tribunal it was for the petitioner to specifically state and establish before the Tribunal and in this Court that he was a workman and was not employed mainly in a managerial or administrative capacity in the bank". Other cases are not of much relevance so far as this case goes.

13. The Party No. I had also filed his written arguments on 28-3-88 and I shall take a brief resume of the same to understand his case. He mainly relies on the facts that his salary was Rs. 270/- p.m. and this is less than Rs. 500/-. Here the salary drawn by him is not of much importance and what is important is the nature of duties carried out by him. About the letter Exb. E-11 he explains that after his suspension he was in disturbed, unsound and unbalanced state of mind and he wrote the letter under dictation of some 3rd person. According to him, this letter is not worth giving any weight. To be fair to the Party I/Workman I am to state here that I am not considering this letter to understand the charge of embezzlement levelled against Party I, but I am considering this letter for the limited purpose of understanding the nature of his duties and I find that upon an over all consideration of all aspects of the case the evidence on record, the admissions of Party I, the application for appointment and the appointment letter, the Party No. I was working in a managerial capacity and he was not just salesman which is repeatedly stated by him. The Party I was not a mere Salesman but he was appointed as Manager of the branch and one of the duty was to promote the sales of the branch and any how the branch ran into trouble in 1974 resulting in the closure of the branch. This being the position the dispute between Party No. I and Party No. II is not an Industrial Dispute within the meaning of the term and Party No. I is not a workman within the meaning of the definition given under the I.D. Act. This being the position I answer issues 2 and 3 accordingly and the finding on the preliminary issue goes against the Party No. I who claims to be the workman within the meaning of the term under the Industrial Disputes Act.

14. After having arrived at a conclusion as stated above as regards the status of Party I, I have now to see as to what further can be done in this Govt. reference. The government reference is in 2 parts. As per the reference as stated in part I this Tribunal has to find out whether the Party I/Madhusudan D. Pawasker is a workman as defined under the Industrial Dispute Act, 1947 and my answer to this is that he is not a workman as per the definition.

15. This then brings me to the consideration of the part II of the reference. As per part II this Tribunal has to find out whether the action of the management of M/s. Tukaram S. Lollenkar in terminating the services of the said Pawasker w.e.f. 16-8-74 is legal and justified. The finding on this issue is not necessary because the Party I is not a workman and the termination of his services is not an Industrial Dispute within the meaning of the term under the Act. In view of this the workman is not entitled to any relief in this Govt. reference and I shall have to answer the reference accordingly. In the result, I pass the following order.

ORDER

It is hereby held that Party No. I, Madhusudan D. Pawasker is not a workman as defined under the Industrial Disputes Act, 1947. Consequently the termination of his services by the management of Party II w.e.f. 16-8-1974 is not an industrial dispute and as such the question of deciding whether the termination is legal and justified does not arise at all. Consequently the Party No. I is not entitled to any relief in this matter and he shall have to seek his remedy elsewhere.

In the circumstances of the case, the parties are directed to bear their own costs.

(S. V. Nevagi)
Presiding Officer
Industrial Tribunal

Order

No. 28/13/83-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 10th November, 1989.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/20/83/M-58/87

Shri Vijaykanta S. Naik — Party I/Workman

V/s

M/s O' Heraldo. — Party II/Employer

Workmen represented by Shri Subhas Naik.

Employer represented by Adv. G. K. Sardesai.

Panaji. Dated: 25-10-89

AWARD

This is a reference made by the Government of Goa, by its order No. 28/13/83-ILD dated April 20, 1983 with an annexure scheduled thereto which reads as follows:

"(i) Whether the past services of Shri Vijaykanta S. Naik, Foreman with the old management of M/s O' Heraldo, Panaji-Goa should be treated as taken over by new management with continuity or not?

(ii) Whether the action of the management of M/s O' Heraldo Panaji-Goa in terminating the services of Shri Vijaykanta S. Naik, Foreman w.e.f. 31-8-1982 is justified?

If not, to what relief the workman is entitled to?"

The above govt. reference was made u/s 10(2) of the Industrial Dispute Act because it is a joint reference. The management of O' Heraldo, Panaji, Goa and the workman Vijaykanta S. Naik a Foreman had jointly applied to the Government of Goa for referring of the industrial dispute to the Industrial Tribunal, Panaji, Goa and the Govt. acting on the above joint reference made the reference u/s 10(2) of the Act. As per the schedule to this reference the government reference is in two parts. As per the first part the Tribunal has to consider whether the past services of the Foreman with the old management of M/s O' Heraldo should be treated as taken over by the new management with continuity or not. Hence in the first part the essence of the controversy is whether the new management took over the Foreman in their service from the old management with the continuity clause. This is the first part.

As per the second part of the schedule this tribunal has to consider the question of termination of the services of the said Vijaykanta Naik w.e.f. 31-8-82. This was a sort of retrenchment effected by the new management on the Foreman and the Foreman was allegedly informed on 31-8-82 that his services as a Foreman were no more required and he should not come for work from the next day. This is the sum and substance of the government reference consisting of two parts as stated above.

After the government reference was received in this office on 20-4-83 the same was registered as IT/20/83 and notices were issued to the parties. It so happened in the proceedings that the parties appeared through their respective legal advisors and the Party I/workman Vijaykanta S. Naik filed his claim statement on 17-6-83 and the same was countered by the Written Statement filed by the management of O' Heraldo on 29th July, 1983. To this the workman filed his rejoinder on 17-8-83 and my Predecessor framed two issues on 5-9-83 casting the burden on

Vijaykanta S. Naik to prove that he was a workman within the meaning of Sec. 2(s) of the Act. Under second issue the management was to prove that the Tribunal had no jurisdiction to entertain the reference as the workman was not a workman within the meaning of Sec. 2(s) of the Act. This is how both the issues are almost the same but worded differently and in that proceeding evidence was recorded as regards these two preliminary issues only and the evidence recorded in IT/23/83 then consisted of the oral testimony of Vijaykanta Naik recorded on 1-2-1984 and that of one of the sons of the Proprietor by name Joao Antonio Fernandes dated 21-6-85. The evidence was led mainly on the preliminary issue. My Predecessor Dr. Renato Noronha by his order dated 8-11-85 recorded a finding holding that the applicant Vijaykanta S. Naik is not a workman within the meaning of Sec. 2(s) of the Act and consequently he held that there was no industrial dispute and as such the Tribunal had no jurisdiction to entertain the government reference. This finding was recorded in a common judgment in companion LCC/12/83 wherein Vijaykanta S. Naik had claimed certain dues from the Opponent Employer.

The workman Vijaykanta S. Naik then took the matter to the High Court by filing writ petition No. 182/86. The Division bench of the Panaji branch of the High Court allowed the writ petition and by their oral judgment dated 10th August, 1987 (vide Exb. E-colly) their lordships quashed and set aside the award passed by my Predecessor and sent down the papers to the Tribunal with a direction to dispose off the govt. reference on merits. After the receipt of the case papers from the High Court the matter was registered in this office at No. IT/20/83/M-58/87. This how IT/58/87 is in fact the continuation of IT/20/83 and this is a reference u/s 10(2) of the Act. The case papers were received and the matter was registered on 9-1-88 after I took over as a Presiding Officer and under my instructions notices were issued to the parties who appeared in the matter through their Legal advisors and the matter was proceeded with at the stage as it was when my Predecessor disposed off the matter. Before me the evidence of Vijaykanta S. Naik was recorded on 25-2-88 followed by evidence of his witness Antonio Pires recorded on 26-3-88. To counter this the management examined the main partner of M/s O' Heraldo by name Anton Caetano Fernandes. His son J. D. Fernandes and one witness by name Inacio Borges whose evidence was recorded on 17-11-88. After the evidence of J. D. Fernandes was over on 10-1-89 the matter was posted for arguments and both oral and written arguments are advanced on behalf of the parties and I have now to dispose off the two parts of the govt. reference one after another and I shall deal with the first part regarding the continuation with the services or not.

In order to understand this first part as regards the continuation of the services some events which took place in 1966 have to be taken into consideration. The witness Anton Caetano Fernandes aged more than 66 years states in examination in chief that M/s O' Heraldo of which he is a partner was purchased by his family on 5th July, 1966 from Aurea Elsa da Gomes. It seems that this part of the statement made by him is not correct because he admits in cross examination that in 1966 he did not purchase the Press from the previous owner but he took it on lease for 50 years. Hence he further admits that no sale deed as such took place but a lease deed was made because the brothers of the previous owner are scattered all over Portugal. He had to give this information when he was confronted with the xerox copy of the lease deed which is in Portuguese language and admitted in evidence at Exb. E-4 (colly). This is the first point while dealing with the aspect of continuity in service. The salient feature of this aspect is that there is not a change over to the new owner but the matter is continued as before there being no change in the management. This is how on the showing of A. C. Fernandes himself he took the lease deed from the previous owner Aurea Elsa da Gomes on 5th July, 1966. We have now to see what would be and what could have been the effect of the change of management on the existing employees of M/s Aurea Elsa da Gomes as on 5th July, 1966.

On this point the witness A. C. Fernandes states that he had informed the employees that "their services shall not be taken over" and it is not quite clear what he means to say by this. However, we find a reply to this in the next sentence where he states that he informed the employees that they shall be employed as "fresh employees". Pausing for a moment here we have to see whether there is any oral or documentary evidence on record showing

this namely a) the termination of the old employees of Aurea Elsa Gomes and b) re-employment of the same employees on fresh terms and service conditions. The witness wants us to believe that to indicate this he had displayed a notice on the notice board informing the workmen that the new management shall not take over the past liability of the workmen with respect to their service. In other words he wants to say that the new management had informed the old servants that the past service would not be counted and if they so desired they should start fresh service from the day one i.e. from 5th July, 1966. The witness was confronted on this point in cross examination and he makes out a case that in 1966 after they took over the Company from the old management he issued fresh letters of appointment to the workmen. He does not remember now whether individual letter of appointment were given to each of the workman. He adds further saying that the notice was displayed on the notice board in the Press and states that he himself had displayed the notice on the board in June, 1966. It has to be noted that he took over the management on 5th July, 1966. Hence he has to explain the propriety of issuing the notice and displaying the notice on the notice board in June, 1966 much before they took over. The lease deed in Portuguese Exb. E-4 (colly), states that it was executed on 21-7-66 but there is a reference at the beginning that some action was taken on 5-7-66. Anyway the action commenced from 5-7-66 and the witness says that he himself displayed the notice on the board in June, 1966. According to him the notice was so displayed for 2 months and it was made clear that the past service of the employees would not be counted and those who wanted to remain in service should continue. In reply to next question he stated that he has got notice in his file and he would produce the same. Be it noted here pertinently that the witness has failed to produce this notice till this day. In reply to further questions he shows ignorance as to whether the previous management had terminated the services of any of the workmen and whether they were paid retrenchment compensation etc. In reply to further question he states that he does not remember now if after he took over the management he continued the workmen on the same salary and other service conditions. He also does not remember if the workmen of the old management who continued with him gave any writing that they agreed with their past service should not be considered. He adds saying that the workman had orally told him that their past service should not be taken into consideration. To this it is suggested to him that no notice was displayed at all and he is making a false statement on this count. As against his evidence the workman Vijay Kanta Naik obviously states that he who was in service of O' Heraldo since 1955 was continuously working without a break till 1975 in which year he was promoted to the post of a foreman. It is an admitted position that he was so promoted as a Foreman in the year 1975. This is positive statement made by him.

We have to consider the above position of evidence to draw certain conclusions about what might have actually transpired on 5th July, 1966 when A. C. Fernandes and his family took the press in their management on a 50 years lease. When the new management takes over the provisions of Sec. 25 FF of the Act came into play. Under this provision the workmen in case of transfer of undertakings are entitled to compensation. However, this clause of compensation does not apply to a workman in any case where if as per sub-clause (a) the service of the workman has not been interrupted by such transfer, under sub-clause (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and thirdly under sub-clause (c) the new employer is under the terms of such transfer or otherwise legally liable to pay to the workman, in the event of his retrenchment compensation on the basis that his service has been continuous and has not been interrupted by the transfer. If we consider the above provision in the proper context two points emerge namely there is no specific termination of the services of the old employees of M/s Aurea Elsa da Gomes on 5th July, 1966 and that there is no fresh appointment letter issued by the new management incorporating new and fresh conditions of service. Nothing of this sort has happened and it has to be presumed that the same old workmen continued in service of the new management as if they did not know anything about the transfer or as if they have nothing to do with the transfer so long as their service conditions remain unchanged. This is the only and plausible conclusion that can be drawn in the given circumstances. In this context Shri G. K. Sardesai

appearing for the management did claim that by law there cannot be a continuity of service after the management is taken over by new management and according to him the workmen must show that there is a continuation of service and it is for the workmen to show that they continue in service on the same conditions as a result of transfer. According to him, there is automatic termination of service as a result of the transfer and for this proposition he relies on an authority reported in 1962(II)LLJ page 621. He also relies on two more authorities reported in 1964, I, LLJ at pages 333 and 368 (two different authorities in the same volume). Relying on these authorities he reiterates that the new employer is not bound to pay compensation by considering the past service. I shall have to see how far and to what extent this proposition is correct and whether the same represents the correct position in law.

In the first case of the three cases a company engaged in the business of manufacture of sugar was incurring losses. A Society purchased the society of the company. The Sugar Company paid retrenchment compensation to its employees as calculated u/s 25F of the I.D. Act. The purchasing society gave re-employment to some of the workmen and refused to give re-employment to some workmen of the Society Company. With these facts it was held that the workmen who were refused re-employment by the purchasing society could not claim re-employment against the purchasing society as a matter of right and the provisions of Sec. 25H would not apply to such claim for re-employment. It was further held by the Supreme Court in that case that "In case of bonafide transfer of business, the workers employed under the vendor, held, entitled to retrenchment compensation only under S. 25FF of the Act against the transferor and not to re-employment also against the transferee or purchaser". With these facts as stated above it is clear that the Vendor Company was bound to pay retrenchment compensation to those workman who were not given re-employment by the purchaser society. The workmen so retrenched u/s 25FF of the Act against the transferor. But under any circumstances they were not entitled to claim re-employment against the transferee or purchaser. The principles laid down in the above case are very clear and on facts they are not applicable to the present case where the management of the Press was taken over by A. C. Fernandes from the owner A. E. Gomes and the sole transaction could not take place because her brothers were scattered in Portugal, a fact with which we are not much concerned. So on facts the management was taken over by A. C. Fernandes and he claims that he had displayed a notice on the notice board for which there is absolutely no evidence and he failed to produce the records even after taking many adjournments for that purpose. So on facts this is a continuation of the services of not only the Party I, but the other workmen who were working with O'Heraldo. So there was no question of termination of their services or retrenchment compensation being claimed from either, the transferor or the transferee. About the other two cases relied upon, I find that the facts are similarly distinguishable. In the case reported at page 333 of 1964 I, LLJ pending execution of a Sale Deed the Vendor Company took over the management control and possession of the Tea Estate. Subsequently the vendor-company retrenched some of the workmen. It was held that Sec. 25FF was not attracted and the retrenchment was done without complying with the provisions of Sec. 25G of the Act, viz. following the principle of 'last come first go'. In the circumstances it was held that the retrenchment was not justified and invalid. In that case, the workmen had accepted the retrenchment compensation. Still the Supreme Court held that the acceptance of retrenchment compensation do not operate as a bar to the workmen from challenging the retrenchment itself. These facts are clearly distinguishable from the facts of the present case. In the third case reported in the same volume, at page 366 the Firm was employing a number of workmen for attending to various lines of business and for this they had a common muster-roll. The Firm transferred its retail business to a newly incorporated private company. Under the terms of the transfer the continuity of service and existing service conditions were secured for the concerned workmen. Thus on facts it was held that the retail business department was not distinct or separate undertaking or establishment and the transfer of the workmen of only one line of business handled by the employer. So it was not held to be a transfer as contemplated u/s 25FF of the Act. The workmen had challenged this transfer on the ground that it was invalid. The company maintained that the transfer was fully valid and justified u/s 25FFF of the Act. On these facts the Supreme Court found that "the agreement shows that when the staff was taken over by the company from the firm, continuity of

service was guaranteed to the staff and the terms and conditions of service enjoyed by them before the taking over also remained unaffected. Hence it was held that this is not a transfer of business but on the contrary there was a guaranteed continuity of service. I find that the facts of that case also do not help the new management in showing that there was no continuity of service. On the contrary the admissions of Shri A. C. Fernandes do go to show that there was no specific intimation or order given to the workmen and the workman Vijay Kanta Naik in particular that he was taken in a new employment and his past service with A. Gomes would not be considered. On the contrary, it goes to show that there was a clear understanding that the services of all the workmen as on the day of transfer were deemed to have been continued and this deeming clause itself indicates that the workmen were not affected so far as the transfer was concerned. It is also seen that the management of Party II is changing the story. Initially, it came out with a story that the business was purchased by the new management. However, when confronted with the agreement in Portuguese language it had to admit that it was a 50 year lease under which the management was taken over. So far as the workman Vijay Kanta Naik is concerned he had joined services with the previous management on 5-3-1955 as a Compositor and the new management in recognition of his good work had promoted him as a Foreman in 1975. All these facts go to show that there was a deeming clause of continuity of service and at no time before there arose the question of claiming compensation from the previous owner or new owner informing the workmen that their past service would not be considered. This is the position so far as the first clause of the government reference is concerned and on facts it has to be held proved that the past service of the workman Vijay Kanta S. Naik, Foreman with the old management of M/s. O Heraldo should be treated as taken over by the new management with continuity of service.

This then brings me to the consideration of the second clause of the government reference and the same is about the action of the management of M/s. O Heraldo in terminating the services of the said workman Vijay Kanta Naik working as a Foreman w.e.f. 31-8-1982. In this regard the management had to admit certain facts. On the showing of the management itself the services of the workman were orally terminated on 31-8-1982 and the industrial dispute started on 1-9-1982 the day on which he was prevented from joining the services. The question therefore posing for consideration is whether by such summarily termination of services by an oral order violated the provisions of Sec. 25F of the Act and it appears that all the three mandatory conditions were not followed by the new management and the mandatory provisions are violated. It appears from the evidence on record that after orally terminating the workman, Foreman on 31-8-1982 the management desperately tried to collect evidence or to lead evidence showing that the provisions of Sec. 25F were followed by them. Now the first clause is about the notice of one month and admittedly and clearly no notice much less a notice in writing was given to the workman. The second clause is regarding retrenchment compensation. In this regard, it has to be noted pertinently that the management according to its own estimation calculated the retrenchment compensation for the period from 1966 to 1981 and admittedly the period between 1955 to 1966 was not taken in to consideration for the purpose of the calculations of the retrenchment compensation. In view of the finding on the first clause it has to be stated here that in the event of a valid retrenchment and the offer of legal retrenchment compensation the workman would have been entitled to the compensation from 1955 to 1981 which has not been offered by the management admittedly. This is the first and serious flaw in the action of the management even if it is accepted for the time being that the retrenchment compensation was in fact offered to the workman. There are circumstances to show that no retrenchment compensation was offered on 31-8-82 or 1-9-82 the crucial dates for considering the case of retrenchment. It is claimed by the Employer A. C. Fernandes on behalf of the management that a cheque of Rs. 14,000/- was offered to the workman or that the workman refused to accept it. The management has tried to lead the evidence of one Inacio Borges to show that the compensation was offered in his presence. It would be interesting to see what this Borges has to say in this regard. This Borges worked with M/s. 'O Heraldo' as a circulation Manager. About the facts and events which took place on 31-8-82 he states that he was on duty on first shift while Vijay Kanta Naik was on duty on 2nd shift. He states that at about 8.00 p.m. the Proprietor A. C. Fernandes told him that Vijay Kanta Naik was to be discontinued from services and that he desired to serve the notice of termination. He knew

that it was already proposed that a notice of termination was to be served on Vijay Kanta Naik. He also knew that a Demand Draft about all dues was obtained from the Corporation Bank, Panaji branch. He had worked out the compensation and the D.D. for Rs. 14070/- was taken. He also says that on 31-10-82 when Vijay Kanta S. Naik was told about the termination the Proprietor had the notice as well as the D.D. with him. They both went to Vijay Kanta Naik who refused to accept the notice. Thereafter the notice and D.D. were sent to him by registered post. In cross examination he admits that under law when a servant is to be retrenched he has to be paid retrenchment compensation and that compensation would be gratuity equal to 15 days salary of every year of service. He states that the compensation was calculated from 1966 and he knew that Vijay Kanta S. Naik was in service of 'O Heraldo' before that and he is not able to say why the previous service was not counted. Pausing for a moment here, it has to be noted that this witness does not toe the line of the management to show that Vijay Kanta Naik and other workmen who were working with M/s Auria Gomes in 1966 were deemed to be terminated upon the transfer. He does not say anything about it. So it has to be seen that what this witness is saying seems to be an after thought and he has been just brought to support the case of A. C. Fernandes to show that on 31-10-82 at 8.00 p.m. the Proprietor told the workman Vijay Kanta Naik that his services were terminated and that he should not come for work next day, and to say this, this witness is brought as a corroborative piece of evidence. I find that this evidence of the witness does not lead the case any further and his evidence can be kept aside for the time being and it would be necessary and worthwhile to see what A. C. Fernandes has to say in this regard. He does state that Vijay Kanta Naik was given the post of a Foreman because he was a seniormost compositor amongst the compositors. The question then is what was the circumstance and the compelling reason which actuated the management to terminate the services of such a seniormost member. He states that he had made it clear to the workmen that his services were being terminated on the ground of economy. He does not elaborate on this point and simply states that he was repeating this to the Foreman every month and finally he told the workman about this and terminated his services in August, 1982. At that time he had calculated the legal dues of the workman at Rs. 14070/- and the letter of termination was also kept ready. Before considering his evidence it would be worthwhile to see what the notice of termination produced at Exb. C (colly) says. It has to be noted pertinently that the notice sent by registered post is dated 8th September 1982. This letter refers to a photo copy of the earlier letter dated 4th September, 1982 where under he was informed that while terminating his services he was offered Rs. 14070/- by a Demand Draft which included retrenchment compensation, gratuity, difference arriving out of Palekar award and wages for the month of August, 1982 and one month's notice pay. This notice does not refer to the earlier notice dated 31-8-82 but a xerox copy of that notice giving details of the compensation of Rs. 14070/- is included. In this notice dated 31st August, 1982 the workman is informed that the News Paper 'O Heraldo' was not reaching to a desired level and thereby resulting in adverse financial conditions. Hence by way of re-organisation the management had decided to abolish the post of Foreman effective from 1st Sept., 1982 and along with this the retrenchment compensation is offered. If we analyse and study these three letters dated 8th September, 1982 giving a reference to earlier letter dated 4th Sept., '82 and the so called notice dated 31st August, 1982. The notice either taken singularly or collectively did not comply with the mandatory provisions of Sec. 25F of the Industrial Dispute Act and the action of the management appears to be arbitrary in nature and the strict legal provisions are not adhered to by the management while taking a shortcut of the so called decision of enforcing economy and steps taken by way of re-organisation to abolish the post of Foreman w.e.f. 1st Sept., 1982 and about this decision the workman is informed at about 8.00 p.m. on the earlier day viz. 31st August, 1982. A plain reading of all these facts will show that the services of the workman who was the seniormost amongst the Compositors were terminated un-ceremoniously and without considering the legal position and throwing to wind the legal position under the law and Sect. 25F in particular. There is a good deal of case law developed on the point of retrenchment resulting in the termination of the services of a Foreman and before considering the legal aspect I shall briefly consider the statement made by the management's witness Anton C. Fernandes.

This witness states in his evidence and wants us to believe that the Foreman had become surplus in view of the re-organisation in the set up and the post was abolished w.e.f. 1-9-82, the moot question being whether the circumstances permitted the management to do so. The management which was fully aware of its arbitrary action has tried to make out a case that the workman was not that important because the Foreman in addition to working as a compositor has to distribute the work amongst other compositors. The management's witness A. C. Fernandes had to admit that there were many compositors and the work of distributing the composing was done by the Foreman Vijay Kanta Naik. The management's witness admits that one Dina Kundaikar who was employed in 1968 was entrusted with this work though A. C. Fernandes denies this. The Managing Partner wants us to believe that it is he who started working as a Foreman after the dismissal of Vijay Kanta Naik. It is question as to what was the compelling reason to do this when the Managing Director or the main partner was an affluent person owning the big property of the Press. This story that he started doing the work of a Foreman is similar to the story of an owner owning a motorcar and knowing how to drive the motor car. Even if the owner knows driving he engages a driver/chaffeur to drive the vehicle for the reason of comfort and so there was no compelling reason for an affluent person like the owner to take upon himself to work as Foreman when there was already a Foreman doing the work efficiently and the ground that this was resorted to on the ground of economy does not appear to be sound and convincing. Hence it can be stated that the management thought it fit, proper and convenient to inform the Foreman on the night of 31st August, not to come for duty overnight from next day morning and then the management had to justify the action and to justify it the notice of termination Exb. C (colly) dated 8th Sept., 1982 is brought on record and it is very clear that this notice does not comply with the legal pre-requisites as envisaged u/s 25F of the Act and there are many cases and some cases of Supreme Court which make the position under law very clear. Before considering the legal aspect I shall instantly dispose off a plea raised on behalf of the management on the point of Res-Judicata in the previous case IT/8/73 the question of past service was stated to be taken into consideration and the award is dated 7-11-74. It was an industrial dispute raised by the union and there is nothing on record to show that the workman Vijay Kanta Naik was a party to it. So I do not think it necessary to discuss that award in detail and suffice it to note that there is no question of any Res-judicata and what is to be considered is the provisions u/s 25F of the Act and Sec. 25FFF of the Act. About Sec. 25FF, I have already discussed the same in the foregoing paragraphs by holding that there was a continuity of service even after the management was taken over by A. C. Fernandes and what now remains to be considered is the question u/s 25F of the Act. As laid down therein no workman can be retrenched from service unless he has been given one month's notice in writing indicating the reasons for retrenchment. Here no reasons for retrenchment are indicated and there is a clear law on the point as to what are the reasons for retrenchment and the unilateral decision of the management to abolish the post of Foreman would not mean a good reason for the retrenchment. Hence by merely stating that the management had decided to abolish the post of a Foreman would not mean that it was a valid reason for retrenchment and this is how the first part of Sec. 25F Sub-Sec. (1) has not been complied with. So also the proper retrenchment compensation equivalent to 15 days wages for every year of service put by the workman has not been made and the offer of Rs. 14070/- if held proved would not meet this requirement because it is on record that the workman Vijay Kanta Naik had joined the service of M/s Auria Gomes in 1955 and in view of the continuity clause the offer for retrenchment compensation should have been from 1955 onwards and not from 1966. This is how the mandatory provision has not been duly and properly complied with by the management. On this point there is a clear authority of the Supreme Court namely the case of Gammon India Limited reported in 1984 Vol. I. Supreme Court Cases, page 501. In that case their Lordships of the Supreme Court were discussing the provision of Sec. 2(oo) read with Sec. 25F of the Act and whether the termination had fallen within the exceptions a, b and c of Sec. 2(oo) and whether the same amounted to retrenchment. Similar to this case in that case too the management had terminated the services of some workmen on the ground of reduction of volume of business. In the instant case the management has offered the spacious ground of economy because the circulation of O Heraldo had reduced considerably. In the above case it was held that the termi-

nation of service on the ground of reduction of volume of business amounted to retrenchment. In that case the management had given one month's notice before termination of service. In the instant case this has not been done. While considering this position in that case their Lordships of the Supreme Court have held that this one month's notice cannot be treated as a notice u/s 25F(a) of the Act. In the instant case the management has not only not given one month's notice but the workman has been expelled instantly because he was told at 8.00 p.m. on 31st August, 1982 that he was removed from service and he was asked not to come to work from next day morning. In that case of Supreme Court, on the facts of that case held that in the absence of compliance of pre-requisites of Sec. 25F of the Act the retrenchment bringing about the termination would be ab-initio void. After holding this the Supreme Court confirmed the finding of the Industrial Tribunal awarding continuity in service with full back wages along with all other benefits.

There is also another authority of the Supreme Court in the case of M/s Avan Services reported in Supreme Court Labour Judgment, Vol. 7 page 280 and the Supreme Court was discussing the facts relating to Sec. 2(oo) read with Sec. 25 FFF of the Act.

On behalf of the management a short point was brought up about the government reference. In the government reference the Tribunal is called upon to consider whether the action of the management in terminating the services is justified or not. So it is stated that the clause about the legality is absent. In this regard it has to be noted that this is a joint reference under Sub-Section 2 of Sec. 10 of the Industrial Dispute Act and the Union as well as the management wanted this tribunal to find out whether the action of the management was justified or not. So on common consent the aspect of legality was not supposed to be considered but only the aspect of justifiability was to be considered and on facts elaborately stated above the action of the management is neither just and nor proper. Consequently, the action will not be legal because it is not taken with adherence to the provision of Sec. 25F which envisages giving reasons for taking the action of termination. No reasons whatsoever are given and no notice is given on the day of termination but on the contrary the workman is asked not to come from tomorrow morning. Further, the workman who was working as a Foreman and who was the only person doing that job is replaced by Dina Kundaikar who is working in the Press even now. In order to take away the doubts if any, the management could have examined this Dina Kundaikar as their witness. This has not been done. Consequently, it has to be held that the action of the management is neither just nor proper. About the continuity clause it is on record that the change in the management was a silent feature and the workman were not stirred by the change over but they continued in the service as if there was no change in the management. Consequently it has to be held that the management of M/s O Heraldo, Panaji, Goa, was taken over by the new management from the old management with the deeming aspect of the workmen then on the roll of M/s O Heraldo continued in service as before and this is applicable to the workman Vijay Kanta S. Naik. I therefore answer both the points accordingly and pass the following order:

ORDER

It is hereby held that the past services of Shri Vijay Kanta S. Naik, Foreman with the old management of M/s 'O Heraldo, Panaji, Goa, should be treated as taken over by the new management with the continuity in service as before.

The action of the management of M/s 'O Heraldo, Panaji, Goa, in terminating the services of Shri Vijay Kanta S. Naik, Foreman w.e.f. 31-8-82 is not justified and the same is not proper. Consequently, he would be entitled to reinstatement into service with full back wages and continuity of service.

There shall be no order as to costs.

Inform the Government accordingly about the passing of the award.

S. V. Nevagi
Presiding Officer
Industrial Tribunal

Order

No. 23/29/85-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Industries and Labour).

Panaji, 2nd September, 1988.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Reference No. IT/29/85

Workmen V/s.	— Workman/Party I
M/s. Bandekar Speciality Valves Corporation	— Employer/Party II

Workmen represented by Shri Subhas Naik, General Secretary, Goa Trade & Commercial Workers Union.

Employer represented by Shri P. K. Lele.

Panaji, dated: 6th August, 1988.

A W A R D

This is a reference made by the Government of Goa, Daman and Diu, by its order No. 23/29/85-ILD dated 20th May, 1985 with an annexure schedule thereto which reads as follows:

- "1. Whether the management of M/s. Bandekar Speciality Valves Corporation, Vasco-da-Gama, are liable to pay bonus for the accounting year 1982-83, to their workmen, employed at their factory; If so, at what rate;
2. If the answer to the above is in the negative whether the demand of the Goa Trade and Commercial Workers' Union for 20 percent bonus for the accounting year, 1982-83 is legal and justified?"

After the above reference was received, notices were issued to the parties and they have filed their statements. The claim statement of the workmen is dated 4-7-1985. The written statement of Party II i.e. dated 10-7-1985 and the Union's rejoinder is dated 24-7-1985. After the pleadings my predecessor considered the question of framing issues, touching the pleadings. My predecessor held that the two issues under Government reference are sufficient enough to cover the pleadings of parties. Hence by his order dated 10-2-1986 he held that no other issues besides the order of reference were needed. The parties thereafter went on trial.

This is a matter of demand of bonus for the year 1982-83. The workmen through the Union claimed the bonus at 20 percent for 1982-83. Alternatively they claimed statutory bonus at 8.33 percent for that year. The company which has been paying bonus to its workmen for the subsequent years from 1983-84 onwards has stuck to its plea, that she is unable to pay bonus for 1982-83 as there was no profit in that year and that the company is not in a fit and proper financial position to pay bonus for 1982-83 even at the minimum rate of 8.33 percent. This is the only and main point involved in this reference and it has now to be seen whether the workmen are entitled to claim bonus at 20 percent or at least at 8.33 percent which is the minimum under the bonus act.

The main stand of the Union is that the company which was newly started some time before 1976 had started actual production in 1976-77 and as such after the completion of successive production for five year, the company became liable to pay bonus at the end of five years and as such the demand for bonus for 1982-83 is justifiable and the same is made in accordance to the provision of bonus act. Before going into legal aspects, I shall briefly go through the oral

and documentary evidence to understand the case of both parties.

The oral evidence is, very short, namely Christopher Fonseca, President of the Union for Party I and Accountant of Party II by name Vijay Joshi. Fonseca says that the company paid bonus at 16 percent for 1983-84 and has been paying bonus at the same rate for successive years. According to him the company has a speciality in manufacturing speciality valves. According to him the company has almost a monopoly in the valves right from the year of production in 1977. The order book of the company is very good. In cross examination he stated that for the year 1982-83 the company made enormous profits. He does not know if company's accounting year was 1st December to 30th November and if in 1982-83 the year was extended to 31-3-1984. This suggestion is aimed at showing that for 1982-83, the company's accounts are for 15 months i.e. from 1-12-1982 to 31-3-1984 and so the profit is for 15 months. In that case the burden shifts on the company to place evidence about the ordered position and show whether the company incurred any loss or profit during the period of 15 months. Company's witness Vijay Joshi who is a Chartered Accountant does not know much about on this order position.

According to him company worked for 1976-77 when trial production started and the accounting year ended on 30th November, 1977. He has produced printed annual reports for 1978-79 onwards. About the financial year for 1982-83 he says that with permission of the Income Tax Authorities the accounting year was extended upto 31-3-1984. This is permissible and there is nothing wrong in it and calculations for 15 months are to be made. However for 1982-83 he has produced type written annual report which he terms as provisional. Why there is no printed annual report? It is not known or shown why it is not there. He has then produced a statement Exb. E-2 showing the allocable surplus for the purpose of paying bonus. Admittedly for the year 1983-84 the company paid the bonus at 16 percent. In that case the company will have to prove that it did not have allocable surplus for paying bonus for 1982-83.

He admits in cross examination that the accounting year of 1982-83 was the 7th accounting year of the company. In that case after the completion of commercial production for five years, the company comes under a statutory obligation to pay bonus from the sixth year which is 1982-83. The company has paid bonus for the 7th year. Then why not for the 6th year? This will have to be explained by the company and the witness has no answer for this.

He admits in cross examination that Party II by name "M/s. Bandekar Speciality Valves Corporation" belongs to "House of Bandekar". This house of Bandekar owns 20 firms/companies which are under one management of House of Bandekar. Whenever there is a relation between the two firms regarding transaction the funds of one firm are transferred to the other firm. This is just possible because the Bandekar house owns 20 firms and it would be necessary for it to make suitable adjustment, for the Income Tax and Sales Tax purposes. Hence the burden lies heavily on the party No. II firm to show the correct financial position and how it is not liable to pay the bonus for 1982-83. The witness Vijay Joshi has deposed in a slip shod manner and it appeared that he was more interested in giving advice to the employer in financial matters so that the firms avoid the vigorous restrictions of Income Tax and Sales Tax. Here we are not concerned with that aspect and the point is about payment of bonus and I shall first study the position under law.

As per the definition of allocable surplus given in section 2 sub-section 4b of the Payment of bonus act, it is sixty percent of available surplus so far as Party II is concerned. Section 5 says how allocable surplus is to be computed. Section 10 lays down conditions regarding payment of bonus. In this reference Section 16 is important because it deals with establishments which are newly set up. In such cases there are provisions in sub-sections 1A, 1B and 1C. One of them sub-section 1A is important. As per this provision the establishment becomes liable to pay bonus in the sixth year of sale and its making profit. So the establishment becomes liable to pay bonus for 1982-83.

The union has demanded bonus of 20 percent but for 1983-84, it has settled for bonus at 16 percent. As per sub-section 1A of section 16 the bonus will have to be calculated not under section 15 but according to the provisions of the act which means that the workmen will be entitled to minimum bonus which is 8.33 percent. The union has failed to prove that it is entitled to 20 percent bonus. As per the provision of section 10 the establishment will be liable to pay bonus, whether it makes profit or not from 6th year of production, but the workmen will be entitled to minimum bonus. No profit and loss account is produced by the Party II. It is significant to note that accounts after 1982 are duly audited but accounts for 1982-83 are not audited. It is claimed on behalf of Party II that it being a partnership firm it is not necessary for it to get accounts audited by a Chartered Accountant. All the same it has to prove the position about allocable surplus by producing the balance sheet. Hence on all counts Party II will be liable to pay the minimum bonus as regarded under the act for 1982-83. Hence while recording a findings or the Government reference, about first part and second part of the reference I hold that the management of M/s. Bandekar Speciality Valves Corporation are liable to pay bonus for the accounting year 1982-83 to their workmen employed at their factory at 8.33 percent which is minimum under the act. In view of this demand of the union for 20 percent bonus cannot be granted. In the result, I pass the following order:

ORDER

It is hereby held that the demand of the union for bonus for accounting year 1982-83 is legal and justified to the extent of the claim for minimum Statutory Bonus (i.e. 8.33 percent). The management of M/s. Bandekar Speciality Valves Corporation, Vasco-da-Gama are held liable to pay bonus for the accounting year 1982-83 to their workmen employed at their factory at the rate of minimum bonus under the act (i.e. 8.33 percent).

In the circumstances of the case the parties are directed to bear their own costs.

S. V. Nevagi
Presiding Officer
Industrial Tribunal

Corrigendum

No. 28/39/89-LAB

Read:—Government Order No. 28/39/89-LAB dated 28.8.1989.

The date of termination of services mentioned in the schedule of the above order may be read as 14.2.1987.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 30th November, 1989.